

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

03 MDL 1570 (RCC)

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THIS DOCUMENT RELATES TO:

***THOMAS E. BURNETT, SR., ET AL. VS. AL BARAKA
INVESTMENT AND DEVELOPMENT CORP., ET AL.
03 CV 9849 (RCC); 03 CV 5738 (RCC)***

**DECLARATION OF JUSTIN B. KAPLAN REGARDING THE ECF ERRORS IN ATTEMPTING
TO FILE PLAINTIFFS'
CONSOLIDATED MEMORANDUMS OF LAW IN OPPOSITION TO THE
MOTION TO DISMISS OF SULAIMAN AL RAJHI, SALEH AL RAJHI AND ABDULLAH AL
RAJHI AND EXHIBITS THERETO**

JUSTIN B. KAPLAN declares under penalty of perjury:

1. I am an attorney admitted to practice *pro hac vice* before this Court and am an associate with MOTLEY RICE LLC, counsel for plaintiffs in *Burnett, et al. v. Al Baraka Investment & Development Corp., et al.*, Civil Action Nos. 03 CV 9849 and 03 CV 5738. I submit this declaration to provide the Court with an explanation as to why plaintiffs Memorandum of Law in Opposition to the Motion to Dismiss of Sulaiman Al Rajhi, Saleh Al Rajhi and Abdullah Al Rajhi and exhibits were not timely filed with the Court.

2. Attached as Exhibit 1 is a true and accurate copy of an email sent from Motley Rice paralegal, Richard J. Cashon, Jr. to the Court on June 30, 2005. Mr. Cashon spoke with Daniel D'Avanzo at the Court regarding his failed attempt and receipt of ECF errors when trying to file the aforementioned documents. He was instructed to send the

email attaching the error messages and that the errors could not be corrected until in the morning.

3. Because of Plaintiffs' difficulties with the ECF system and repeated error messages, Plaintiffs served their responsive papers and exhibits via email on counsel for Sulaiman Al Rajhi, Saleh Al Rajhi and Abdullah Al Rajhi on 6/30/05.

4. Repeated attempts were made on Friday 7/1/05 to file aforementioned documents, all resulting in ECF error messages. Mr. Cashon was informed by the Court that he should attempt again on 7/5/05.

5. On 7/5/05, Mr. Cashon spent an hour on the phone with the IT department at the Court attempting the following with their assistance:

- 1) filing Abdullah Al Rajhi ("Abdullah") through Netscape with all attachments
- 2) filing Abdullah through Netscape with no attachments (just Memo. of Law)
- 3) filing Abdullah through Internet Explorer ("IE") with all attachments
- 4) filing Abdullah through IE with no attachments (just Memo. of Law)
- 5) filing Saleh Al Rajhi through IE with no attachments (just Memo. of Law)

All attempts resulted in error messages. Cashon was informed that the IT department were able to gather some "server info." during each of these attempts that were to be passed on to the head systems person for the Federal Court's ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 7, 2005.


Justin B. Kaplan

Exhibit 1



Litigating Today For A Better Tomorrow

Motley Rice LLC Attorneys at Law

-----Original Message-----

From: Cashon, Richard
Sent: Thursday, June 30, 2005 8:21 PM
To: 'daniel_davanzo@nysd.uscourts.gov'
Subject: ECF error message
Importance: High

Dear sirs,

I spoke with you tonight @ 6:50pm regarding an ECF error I received while attempting to file one of three Memorandums in Opposition to a Motion along with a Declaration and fourteen (14) attachments - all under the 2.5 megabyte limit required by the Court. I was attempting to file these across 11 cases in a consolidated MDL action (MDL 1570 (RCC)). You instructed me to email the error messages I received to you and to Mr. Kirby for resolution, and informed me that this problem could not be corrected until tomorrow morning (7/1/05). I have attached the error messages to this email in PDF files. Please let me know when the system will allow me to file the document. Thank you.

Richard J. Cashon, Jr.
Paralegal to Jodi Westbrook Flowers
Motley Rice LLC
P.O. Box 1792 (29465)
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
Tel: (843) 216-9555
Fax: (843) 216-9680
E-mail: rcashon@motleyrice.com

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Responses and Replies

[1:03-md-01570-RCC In Re: Terrorist Attacks on September 11, 2001](#)

Syntax error -

781897-24438-111613.682833354:unload("cs_appeal,cs_bondinfo,cs_case_number,cs_caseid,cs_chapter,cs_cjr;

(cs_caseid =

Transaction aborted.

An Internal Error has occurred the error code 71. - 1 (1)-(21418 248 /tmp/396591613086936)

An Internal Error has occurred the error code 70. -1

Responses and Replies

[1:03-md-01570-RCC In Re: Terrorist Attacks on September 11, 2001](#)

Syntax error -

781897-3421-43885.3201709575:unload("cs_appeal,cs_bondinfo,cs_case_number,cs_caseid,cs_chapter,cs_cjra_ (cs_caseid =

Transaction aborted.

An Internal Error has occurred the error code 71. - 1 (1)-(21838 248 /tmp/403357655930053)

An Internal Error has occurred the error code 70. -1

Responses and Replies

[1:03-md-01570-RCC In Re: Terrorist Attacks on September 11, 2001](#)

Syntax error -

781897-5190-103938.863248069:unload("cs_appeal,cs_bondinfo,cs_case_number,cs_caseid,cs_chapter,cs_cjra_ (cs_caseid =

Transaction aborted.

An Internal Error has occurred the error code 71. - 1 (1)-(45193 243 /tmp/741722392533272)

An Internal Error has occurred the error code 70. -1

Responses and Replies

[1:03-md-01570-RCC In Re: Terrorist Attacks on September 11, 2001](#)

Syntax error -

781897-7017-97642.7847653994:unload("cs_appeal,cs_bondinfo,cs_case_number,cs_caseid,cs_chapter,cs_cjra_ (cs_caseid =

Transaction aborted.

An Internal Error has occurred the error code 71. - 1 (1)-(62739 232 /tmp/104854947014221)

An Internal Error has occurred the error code 70. -1

Responses and Replies

[1:03-md-01570-RCC In Re: Terrorist Attacks on September 11, 2001](#)

Syntax error -

781897-7515-68551.7747976178:unload("cs_appeal,cs_bondinfo,cs_case_number,cs_caseid,cs_chapter,cs_cjra_ (cs_caseid =

Transaction aborted.

An Internal Error has occurred the error code 71. - 1 (1)-(56917 186 /tmp/101078435643917)

An Internal Error has occurred the error code 70. -1